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*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

PAUL W.J. BRAUN

Grievor

and

**DEPUTY HEAD
(Royal Canadian Mounted Police)**

Respondent

Indexed as

Braun v. Deputy Head (Royal Canadian Mounted Police)

In the matter of individual grievances referred to adjudication

REASONS FOR DECISION

Before: [Marie-Josée Bédard, adjudicator](#)

For the Grievor: [Lyle M. Smordin, counsel](#)

For the Respondent: [Isabel Blanchard, counsel](#)

Heard at Winnipeg, Manitoba,
December 9 and 10, 2009 and April 14 and 15, 2010.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] Paul W.J. Braun (“the grievor”) held the position of Director of Employee Services at the regional office of the North West Region of the Royal Canadian Mounted Police (RCMP or “the employer”) in Winnipeg, Manitoba.

[2] Following an incident during which the grievor was apprehended for shoplifting in a grocery store, the employer made a number of decisions that ultimately led to the termination of his employment. First, on July 13, 2006, the employer suspended the grievor’s RCMP Reliability Status (RRS). It then suspended the grievor without pay as of July 26, 2006. On November 6, 2007, the employer revoked the grievor’s RRS and, finally, it terminated his employment on April 8, 2008. The grievor grieved each decision. In an interim decision, *Braun v. Deputy Head (Royal Canadian Mounted Police)*, 2009 PSLRB 129, I determined that three of the four grievances were validly referred to adjudication, namely, the grievances against the suspension without pay, the suspension of the grievor’s RRS and the revocation of his RRS and that, therefore, I was not seized of the grievance challenging the termination of the grievor’s employment.

[3] This decision deals with the employer’s objection to my jurisdiction to hear the three grievances on the grounds that they do not concern adjudicable matters under section 209 of the *Public Service Labour Relations Act* (“the Act”). Essentially, the employer contends that the decisions were administrative in nature and that, therefore, they do not fall within the parameters of section 209 of the Act. The grievor, for his part, contends that the grievances are adjudicable as the employer’s decisions amounted to disguised discipline. The grievor also contends that the employer acted in bad faith and that it breached his right to procedural fairness.

II. Summary of the evidence

[4] On February 8, 2006, the grievor was apprehended by two loss-prevention officers (LPO) in a Safeway store in Winnipeg for suspected shoplifting. The LPOs did not press charges against the grievor but made him sign a no-trespassing agreement.

[5] The LPOs did not testify at the hearing. However, their written statements were provided in a report that they prepared and that was entered into evidence (Exhibit E-8). Counsel for the grievor objected to the filing of the report on the ground that it contained hearsay evidence. I dismissed the objection on the basis that the

employer had the report in its possession and considered the information that it contained when it made its decisions. However, I specified that the facts described in the statements would not be deemed proven solely by the filing of the report. The LPOs were also interviewed on February 13 and 14, 2006, by two investigators of the Criminal Operations Unit of the RCMP, and the transcriptions of these interviews were entered into evidence as part of the security file about the grievor (Exhibit E-18). I do not find it necessary to reproduce their lengthy statements, but some parts are central to what ensued.

[6] The LPOs' version of events can be summarized as follows. The grievor was observed concealing objects in his pockets and then paying for some items, but not those concealed in his pockets. On reaching the exit, the grievor realized that he was being observed by one LPO and, instead of exiting the store, he went back inside and started putting items back on the shelves, when he was apprehended. The LPOs also stated that the grievor presented himself as an undercover RCMP police officer under treatment for a stress and depression condition related to his work and that he referred them to Dr. Mary Orr, from the RCMP, to confirm the information. The LPOs indicated that they contacted Dr. Orr, who confirmed that the grievor was an employee of the RCMP but did not provide any medical information. The grievor also purportedly provided the names of two physicians who allegedly were treating him. The LPOs believed the grievor's story and decided not to press charges against him.

[7] The grievor testified and provided a version of the incident that is different, in several ways, from the version provided by the LPOs. He indicated that the incident occurred during a difficult period of his life and that, on February 8, 2006, he had not been sleeping well, that he felt tired and that he was not feeling well. The grievor described the incident as a psychological episode during which he experienced a panic attack that triggered bizarre and frantic behaviour during which he ran around, putting items in his pockets and taking items from one shelf to place them somewhere else. He admitted putting items in his pockets but denied ever intending to leave the store with unpaid items. He denied presenting himself as an undercover police officer. However, the grievor acknowledged that the LPOs were under the impression that he was an undercover police officer, and he stated that they asked him, at least four times, if he was an undercover officer. He was adamant that, each time, he clearly replied that he was not a police officer. I will return to a more detailed description of the grievor's version of that matter in my reasons. The grievor also denied providing

the name of Dr. Orr and stated that the LPOs contacted Dr. Orr on their own initiative. However, he admitted that he mentioned that he was pursuing treatment from Dr. Mulgrew, who had retired but with whom he allegedly had previous dealings, and that he also mentioned the name of Dr. Mulgrew's colleague.

[8] When questioned by his counsel as to how he thought the LPOs got the idea that he was an undercover officer, the grievor said that the explanation came later when he received the RCMP report that said that one of the LPOs had called an acquaintance of his at the Winnipeg police who confirmed that he knew a veteran named "Brown" who was an undercover officer. The grievor thinks that there was confusion between Mr. Brown and himself.

[9] The grievor said that later that same day he called Dr. Orr to apologize for involving her in the incident, and he invited her to meet with him the next day to discuss the situation.

[10] The grievor reported two prior similar incidents, one that occurred in 2004 in a Safeway store in Calgary and one that occurred in 2005 in a bookstore and shopping mall in Edmonton. He explained that, on both occasions, he experienced panic attacks and acted in a bizarre fashion, running in the aisles and removing and displacing goods from the shelves and putting them on other shelves. He denied trying to leave the stores with unpaid items.

[11] He explained that the February 8, 2006 incident was of the same nature as those two previous incidents but that it was more intense and of a larger magnitude, and he realized that he could no longer control the situation and that he needed help. The following day, he went to work and contacted the Employee Assistance Program (EAP) for help.

[12] The grievor explained that, a couple of days after the incident, he saw a psychologist referred by the EAP who was of the view that he should be seen by a psychiatrist and suggested that he present himself at the hospital. He indicated that he went to the hospital and was examined by Dr. Glen Lowther, a psychiatrist, who after a discussion with him, diagnosed major depression and prescribed medication. The grievor also indicated that he pursued treatment under Dr. Lowther for some time, that he still takes the medication and that he has not experienced any recurrence.

[13] The following events unfolded after the February 8, 2006 incident.

[14] Garry Jay, who occupies the position of Human Resources Officer for the North West Region, and who was the grievor's superior, testified. He stated that he was informed about the incident on the night of February 8, 2006 by Dr. Orr, who is the health services officer in Winnipeg and who reported directly to the grievor. Mr. Jay stated that Dr. Orr called him to inform him that, earlier in the day, she had been contacted by an LPO at a Safeway store in Winnipeg. He told her that he had apprehended the grievor for shoplifting and that the grievor had told him and his colleague that he was an undercover police officer under treatment for a stress-related condition. Mr. Jay indicated that Dr. Orr told him that the LPO had informed her that the grievor had provided her name, saying that she would be able to confirm the grievor's medical treatment. Dr. Orr also told Mr. Jay that the LPO had reported that the grievor had said that he was receiving treatment from a Dr. Mulgrew and a Dr. Fletcher. Dr. Orr purportedly advised Mr. Jay that she had told the LPO that the grievor was the director of employee services, that he was her supervisor and that she was not able to provide any medical information about him. Mr. Jay stated that Dr. Orr further said that she was troubled by the fact that the grievor had mentioned that he was receiving treatment from Dr. Mulgrew, her predecessor, since he had been retired for a number of years. Mr. Jay also stated that Dr. Orr told him that the grievor contacted her at home later that evening to apologize for involving her and that she told him that he should contact Mr. Jay to advise him of the situation.

[15] The next morning, Mr. Jay briefed the Commissioner about the incident. He also indicated that he was allowing the grievor 24 hours to notify him about the situation. On February 9, 2006, since the grievor had not contacted him, he decided to travel to the Winnipeg office (his office is located in Regina, Saskatchewan) the next day to meet with the grievor.

[16] The grievor, for his part, stated that it never occurred to him to inform Mr. Jay about the incident for the following two reasons: first, he was trying to deal with his situation by getting support through the EAP, and second, he did not see why he should inform his supervisor about an incident that occurred in the community and not at work and that was due to a medical problem.

[17] Mr. Jay stated that, while en route to Winnipeg, he contacted André Laurendeau, Director of Labour Relations in Ottawa, Ontario, to inquire about the differences in

process when an incident involved an employee holding a position at the executive level. He was told that the Treasury Board would need to be involved if discipline or termination was contemplated. Mr. Jay stated that his own authority with respect to discipline was limited to imposing a suspension without pay for no more than 10 days. Mr. Jay stated that, at that point, he was not contemplating discipline, but that he was in a fact-finding mode and that he felt it prudent to inquire about the limits of his authority.

[18] Mr. Jay and the grievor had a meeting on February 10, 2006. Their respective versions of the meeting are contradictory.

[19] Mr. Jay provided the following version of the meeting. When he arrived at the grievor's office, he had the impression that the grievor was shocked to see him. The grievor asked him why he was present, and he replied that he was there to discuss the February 8 incident at the Safeway store. The grievor readily admitted that he had been apprehended by an LPO at the store and told Mr. Jay that he had been under significant amounts of stress in the last little while and that he had been receiving treatment for stress and depression since the age of 20. Mr. Jay also stated that the grievor told him that it was the first time that stress and depression had manifested in that type of behaviour.

[20] Mr. Jay indicated that he asked the grievor about identifying himself as an undercover officer and that the grievor replied that he did not know what he was talking about. Mr. Jay stated that he then asked the grievor about Dr. Mulgrew and that, again, the grievor replied that he did not understand what he was talking about. Mr. Jay stated that he also asked the grievor why he had brought Dr. Orr into the situation and that the grievor replied that the LPOs had contacted Dr. Orr on their own initiative.

[21] Mr. Jay felt that he was not getting the full story from the grievor and kept asking questions. He stated that, when he asked questions about identifying himself as an undercover officer, the grievor said that he could have said or given the LPOs the impression that he was an undercover officer and that he had not dissuaded them from that impression. Mr. Jay stated that he then again asked the grievor why he had implicated Dr. Orr and that the grievor replied that he just wanted it to go away. He further stated that he asked the grievor again about Dr. Mulgrew and that the grievor replied with the same answer that he just wanted the questioning to go away.

[22] Mr. Jay said that, at one point, he asked the grievor why he had not brought to his attention earlier the concerns about his depression or medical condition so that he could have provided support. He stated that the grievor's answer troubled him, and he reported that the grievor said the following: "Don't be too hard on yourself, I have been deceiving and lying to people all my life. I have learned to tell people what they want to hear."

[23] Mr. Jay said that a number of issues, as follows, caused him concern:

- He had several pieces of information about what had happened during the incident.
- The grievor had purportedly identified himself as an undercover RCMP officer on stress leave.
- The grievor had falsely identified the names of physicians that allegedly treated him.
- The grievor had engaged his subordinate and had falsely stated to the LPOs that Dr. Orr would know about his treatment.
- The grievor had failed to advise Mr. Jay about the situation.
- The grievor denied identifying himself as an undercover officer and using the names of Drs. Mulgrew and Fletcher and, after a series of questions, the grievor provided a watered-down version of the issue of identifying himself as a police officer.

[24] After considering all those issues, Mr. Jay decided to place the grievor on leave pending further investigation. At that point, the grievor was suspended with pay.

[25] Mr. Jay was asked by counsel for the grievor if he made notes of his meeting with the grievor. Mr. Jay confirmed that he made notes after the meeting, and the notes were entered into evidence at the request of counsel for the grievor. The notes accorded with Mr. Jay's testimony, but there was no reference to the grievor's alleged comment that he has lied all his life. Questioned as to why he did not make a note of that comment, Mr. Jay indicated that he did not need to make a note, as he would remember it all his life.

[26] The grievor, for his part, provided the following description of the February 10, 2006 meeting: Mr. Jay showed up unannounced at his office and told him that he wanted to discuss the February 8 incident. He agreed and summarized what had occurred.

[27] The grievor indicated that before he had finished his summary, Mr. Jay started asking him several questions. Mr. Jay was not listening; he was asking pointed questions and was interrogating him using police tactics. The grievor further stated that Mr. Jay was becoming increasingly frustrated, and that he told him that he would have to initiate an investigation into the matter and that, during the investigation, Mr. Jay would suspend him for administrative reasons.

[28] Mr. Jay testified that, following his meeting with the grievor, he went to the internal investigation unit and asked investigators to contact the Safeway store to obtain the details of what had happened and to obtain statements from the LPOs. The investigators interviewed the LPOs and Dr. Orr.

[29] On February 14, 2006, the grievor sent a letter to Mr. Jay in which he provided his written version of the incident. In the letter, the grievor described the questions that the LPOs had asked him about being an undercover police officer and recognized that he did not clearly answer that he was not a police officer. The letter contains the following:

...

Further to our meeting on 06/02/10, in which you informed me of these allegations and that it was advisable for me to present my version events, to you in writing - the following is intended as a summary of events as they transpired, with the emphasis on the allegations, that I presented myself as a police officer to the security staff at the SafeWay store (Portage and Cavalier), on 06/02/08.

...

In the staff lounge area, I was asked to empty my pockets, (which still contained several items) and identify myself. I cooperated and then was asked to produce ID to verify my identity. I told the security staff, that I did not have my wallet on me, but that they would escort me to my vehicle, that I would retrieve my drivers license, from the bag in my trunk. The senior fellow responded, "Don't you have any kind of identification, on you?" I searched through my pockets and discovered that I had a business card, in my jacket pocket, which I handed him.

After, he looked at it; he turned to his partner and said, "Well, would you believe it - RCMP." He handed the business card to his partner, turned to me and said, "You must have your badge and ID with you - let me see them." I replied, "I

don't have a badge, and I don't want my work with the RCMP to become involved in this ..." and before I could continue, he said, "Your undercover, aren't you "and he seemed quite please and excited by this. I was getting quite annoyed by these antics and said, to him, "Look, this has nothing to do with my work - why don't we go out to my car and get my ID and get on with this?" He agreed and escorted me to my vehicle.

...

While he was on the other side of the room making calls, the younger fellow picked up my licence and began copying information from it, onto a form. He suddenly stopped, picked up my license and walked over to the partner, who was still on the phone. As, they were less than fifteen feet away, from where I was sitting, I could hear most of what they were saying. The younger fellow, said, "Look at this, it doesn't even show Class 4, on his license, so that no one can tell he's RCMP." At the time, I didn't know what they were talking about and when I turned toward them to listen more closely, they walked away and continued their conversation. On reflecting on this, a couple of days later, I came to realize that the absence of the police grade on my license, reinforced in their minds, their notion, that I was an undercover police officer. At the time, that this event occurred, I had no idea what they were talking about.

The more senior fellow continued to make calls on his cell phone and the younger fellow began to notice that my condition was steadily deteriorating. He attempted to engage me in conversation. During this conversation, he asked me a number of times about my work with the RCMP. Each time, I told him that I didn't want to talk about my work and just get out of there, so that I could go to bed. I was not trying to be uncooperative or evasive but simply felt that I would lose control and collapse, if this ordeal continued much longer. He responded to my rebuffs, with, "It's OK, you probably aren't suppose to talk about your work anyways - I understand." Again, had I appreciated what he was talking about, I'm sure I would have found the strength to dispel his mistaken notions about my employment status with the Force, but I the time all of this was beyond my comprehension and ability to respond in a coherent manner. Shortly thereafter, they contact Dr. Orr, had me sign a document barring me from the store and escorted me to the exit, from where I went home.

In summary, at no time did I present myself as an undercover police officer of the RCMP. This notion was entirely invented and promulgated by the misinterpretations of the two security staff, with which I had contact. Had, I been in a clearer frame of mind, I may have been able to

fully comprehend their mistaken beliefs, at the time and certainly would have taken action to clarify the situation and remove any and all doubt from their minds, about my employment status with the RCMP.

I now realize that my refusal to respond to their questions, concerning my employment probably further reinforced their mistaken notion. This was not intentional, but simply a reflection of my wanting to end the interview, as quickly as possible and not deal with any question that were related to the mater, at hand. . . .

. . .

[Emphasis added]

[Sic throughout]

[30] On February 20, 2006, Mr. Jay wrote the Commissioner a briefing note about the incident. In that note, Mr. Jay described his February 10, 2006 meeting with the grievor, which concurred with the version he provided at the hearing. The description indicated that the investigation into the matter continued and that the issue of the grievor maintaining his security clearance was examined. Mr. Jay also indicated in the note that he wanted to obtain an assessment of the grievor's medical condition, to determine whether it had influenced his behaviour before making any recommendations about discipline or other measures. On that point, he wrote the following:

STRATEGIC CONSIDERATIONS:

The Executive level status of this manager necessitates that the matter be dealt with in a comprehensive manner. The nature of this employee's medical condition will have to be examined to determine whether it could cause the "bizarre" illegal behaviour which was observed. Its potential causal link to the story provided by Mr. Braun, that he was an undercover police officer and was suffering from work related stress, will also be examined. This information may also inform the North West Region Human Resource Officer and Force management as to their level of confidence in this employee's continued employment in his management role.

These evaluations will be completed before any recommendations are made to Treasury Board in relation to the disciplinary action which will be taken. Further briefing notes will be provided.

[31] On May 1, 2006, Mr. Jay and the grievor had another meeting. The grievor stated that Mr. Jay had contacted him the day before and had said that he needed to complete his performance review for the fiscal year 2005-2006. Mr. Jay and the grievor provided contradictory versions of the meeting.

[32] Mr. Jay stated that during the meeting they discussed the grievor's performance evaluation for fiscal year 2005-2006, which had been satisfactory. He indicated that they both agreed not to refer to the February 8 incident in the performance report to avoid tarnishing an otherwise satisfactory performance. They also discussed the incident. Mr. Jay stated that the grievor told him that, if he no longer had confidence in him in his job, he was asking for an opportunity to look for another job before Mr. Jay moved forward with discipline or a change to his RRS status. Mr. Jay stated that he agreed to wait before forwarding the grievor's file to the Security Branch. Mr. Jay also stated that he had received advice to suspend the grievor without pay but that he decided to wait and see if the grievor could secure different employment before moving forward.

[33] The grievor, for his part, stated that Mr. Jay presented him with a draft performance appraisal that referred to the February 8 incident with the focus that he was guilty of shoplifting and impersonating a police officer. The grievor stated that he refused to sign the proposed performance report and that Mr. Jay then agreed to strike those references from it.

[34] The grievor indicated that Mr. Jay informed him that he also wanted to discuss the February 8, 2006 incident and told him that he no longer wanted him on his team and that, as a result of the incident, he considered the grievor untrustworthy, unreliable and a security risk. The grievor stated that Mr. Jay further said that he was giving him two months to secure employment elsewhere, at the end of which he would terminate his employment with the RCMP. The grievor indicated that he told Mr. Jay that he did not have to put up with that sort of intimidation and that Mr. Jay had no right to say what he said. Mr. Jay purportedly replied to him that he "could go along with this or they could do it the rough way." The grievor stated that, approximately two days after that meeting, a constable from the Criminal Investigation Unit contacted him and informed him that he, along with another constable, had been instructed to proceed with a criminal investigation and that they wanted to interview him. When the

grievor asked who had given them the instruction, the constable purportedly replied that he could not say.

[35] With respect to the grievor's medical assessment, Mr. Jay testified that he originally intended to go through Health Canada until he was informed that their assessment would not provide him with the information that he needed. Health Canada's mandate was prospective and would focus on the grievor's ability to return to work. Given that such an assessment would not address the question of whether the grievor's medical condition could explain his behaviour or could have influenced in any way his behaviour during the February 8 incident, it was decided to have the grievor assessed by a forensic psychiatrist, Dr. Stanley Yaren. An appointment was initially scheduled for May 2006, but the grievor did not attend. Mr. Jay indicated that he was informed that the grievor had advised Dr. Yaren that he did not want to participate in the assessment because he had not yet received all the material that the RCMP was supposed to give him. Mr. Jay said that he was surprised because he had been told that all relevant material had been sent to the grievor but added that he contacted the grievor to inquire about the material that he allegedly did not have in his possession. He set up a meeting with the grievor for June 15, 2006 to discuss the next steps with him and to give him another copy of the documents, but the grievor did not attend, and Mr. Jay left the documents for the grievor at reception. Eventually, another appointment was scheduled with Dr. Yaren for September 2006.

[36] The grievor, for his part, stated that he had originally agreed to undergo a medical assessment with Health Canada and that an appointment had been scheduled with a Health Canada physician for March 24, 2006. He indicated that a couple of days before the appointment he called the doctor's office and was informed by the clerk that the RCMP had cancelled the appointment. When he asked why the appointment had been cancelled, he was informed that the RCMP had inquired about the nature of the assessment and that, when it was informed that the focus would be on returning to work, it cancelled the appointment. The grievor stated that he found it strange and that he tried to contact Mr. Jay for an explanation, without success. He later received a call from the Labour Relations Manager in Edmonton, Alberta, who asked him if he would agree to see a forensic psychiatrist in Winnipeg. The grievor said that he agreed and that an appointment was originally scheduled for May 2006.

[37] The grievor indicated that, before the appointment, Dr. Yaren called to go over some information in preparation for the assessment. Dr. Yaren went over the process with him and reviewed a number of documents that the RCMP had given him. The grievor indicated that at one point Dr. Yaren referred to documents that contained negative comments about him, namely, that he had a history of discipline and that he was manipulative. The grievor stated that he told Dr. Yaren that he did not know of those comments and that he wanted to obtain copies of them before undergoing the assessment. The grievor said that he called Mr. Jay to inquire about the documents and to obtain a copy, which he never received.

[38] The grievor indicated that he finally agreed to the assessment because Dr. Yaren promised that he would not use the contentious documents.

[39] On April 26, 2006, investigators from the Criminal Operations Branch of the RCMP were tasked with conducting a statutory investigation into allegations of theft under \$5000 and of personating a peace officer under the Criminal Code (pages 44 to 45 of the security file (Exhibit E-18)). The grievor was interrogated on May 10, 2006, and the transcript of that interrogation is in the security file.

[40] Criminal charges were laid against the grievor on July 6, 2006. On July 12, 2006, Mr. Jay received a transit slip from the officer in charge (OIC) of the Criminal Operations Division that stated “[w]ith this matter proceeding to criminal charges you may want to examine the ‘status’ of this employee and consider suspension from duties without pay.” Mr. Jay stated that, when he was informed that criminal charges would be laid, he was no longer able to delay the decision to suspend the grievor without pay and to forward the file to the Security Branch.

[41] Mr. Jay stated that he was informed that, on July 13, 2006, the grievor’s RRS had been suspended. He indicated that he was not involved in the decision to suspend the grievor’s RRS but that he considered that fact when he decided to suspend the grievor without pay, since having a valid RRS is a prerequisite to hold any position at the RCMP.

[42] The letter of suspension without pay reads in part as follows:

. . .

It is alleged that on 2006-02-08 you misrepresented yourself to be a Regular Member of the Royal Canadian Mounted Police during your apprehension on suspicion of shoplifting by a Loss Prevention team at a Canada Safeway store in Winnipeg.

These allegations, if founded, would demonstrate a serious breach of security as well as misconduct. I have now been advised of the temporary suspension of your security clearance by Department Security. I must inform you that you are being relieved from duty indefinitely effective immediately, without pay, pending an investigation into this matter.

During the investigation you are not to enter the premises of the R.C.M.P. unless required to do so to file a complaint, or to attend a meeting at my request. . . .

Upon finalization of this investigation you will be promptly informed of Management's decision in this regard.

[43] Mr. Jay stated that suspending the grievor without pay was an administrative decision that was made in accordance with the RCMP's administrative manual, specifically with "Chapter 13. Discipline - Public Service Employees - section H.1.e. of the Guidelines For Managers," which states the following:

If the alleged misconduct so warrants, suspend the employee from duty immediately and obtain approval without delay. Tell the employee that he/she is suspended from duty without pay pending investigation of his/her alleged misconduct and that it will be confirmed in writing.

NOTE: A suspension without pay pending investigation is an administrative relief and is not a disciplinary action. It is to be used to protect the service, persons or property when the presence of the employee at work cannot be tolerated or could undermine or impede the investigation.

[44] Mr. Jay said that, at that point, he had not yet made a decision as to whether he would recommend discipline and that he was awaiting Dr. Yaren's assessment.

[45] On July 13, 2006, Robert Lanthier, Director General of the Departmental Security Branch, RCMP, suspended the grievor's RRS. The letter of suspension contains the following:

...

I am writing to inform you that I have reviewed your RCMP Reliability Status as a result of the following information brought to my attention:

- *on 2006-02-08, you were observed by security personnel leaving a Safeway store in Winnipeg with unpaid concealed items valued at approximately \$40.00. You allegedly told the security personnel that you were an undercover RCMP officer under treatment for stress, You will be charged criminally for Theft Under \$5,000.00 and Personating a Police Officer as a result of your involvement in this incident.*

*An RCMP Reliability Status is based upon the honesty, trustworthiness, reliability and integrity of an individual. In view of the foregoing, I **suspend** your RCMP Reliability Status effective this date and you are now prohibited from any unescorted access in RCMP facilities.*

I will be conducting a further review of the circumstances after the completion of the criminal process to determine whether your RCMP Reliability Status may remain valid or whether it should be revoked for cause. You will be afforded the opportunity at a later date to provide me with your written representations prior to my making a final decision.

...

[Emphasis in the original]

[46] Mr. Lanthier testified. He explained that he has been retired since 2007 but that, in 2006, he was the director general of the Departmental Security Branch of the RCMP. He was responsible for ensuring the security aspects of the organization, the facilities and the personnel and for applying the Treasury Board *Government Security Policy* and the RCMP *Personal Security Policy* (“the RCMP Policy”).

[47] He explained the purpose of the Treasury Board *Government Security Policy* and the responsibilities of departments and referred more precisely to section 10.9, which reads in part as follows:

The Government of Canada must ensure that individuals with access to government information and assets are reliable and trustworthy. For national security, it must also ensure the individual’s loyalty to Canada in order to protect itself from foreign intelligence gathering and terrorism.

Special care must be taken to ensure the continued reliability and loyalty of individuals, and prevent malicious activity and unauthorized disclosure of classified and protected information by a disaffected individual in a position of trust.

...

Departments must also:

...

e. Update reliability status and security clearances regularly.

f. For cause, review, revoke, suspend or downgrade a reliability status or a security clearance.

...

[48] He also referred to the RCMP *Policy* and explained that each employee must have valid reliability status or security clearance at the level appropriate for the position that she or he occupies and that an RRS is the lowest level and a condition of employment in any capacity (sections D.2 and F.3.a of the RCMP *Policy*). He also referred to section D.8, which provides that “. . . an RCMP Reliability Status may be denied, revoked or suspended at any time for cause only by the OIC Departmental Security Branch.” As the director general of the Branch, Mr. Lanthier was the OIC within the meaning of the RCMP *Policy*. He explained that, when assessing the reliability of a person, the factors that are considered relate to the honesty, the trustworthiness and the integrity of the person. He added that the RCMP administrative manual provides a list of risk factors associated with security and reliability.

[49] As the OIC of the Departmental Security Branch, Mr. Lanthier was the only person authorized to suspend or revoke an RRS. He specified that his decisions related only to security issues and that he had no authority to impose discipline. He added that the security process and the disciplinary process are separate and independent.

[50] Mr. Lanthier explained the process that is followed when an employee's RRS is questioned for cause. When the Departmental Security Branch is informed of a potential security risk, the officer responsible for departmental security at the regional level undertakes an investigation of the matter with his team, which means interviewing the persons involved and analyzing all relevant material. At the end of the investigation, the regional officer makes a recommendation about the status of the employee. Upon receiving the recommendation from the regional officer, Mr. Lanthier

performs his own review of the file and makes the final decision. Mr. Lanthier stated that he does not meet or discuss with the employee involved and that his decision is based on a review of the documents contained in the file. The regional officer performs the investigation portion of the process.

[51] Mr. Lanthier identified the security risk factors out of the list provided in the administrative manual that were involved in the grievor's case:

...

c. Is heavily in debt or has other financial problems.

...

e. Excessive use of alcohol.

...

g. Personal problems which appear to place the employee under a high degree of stress.

h. Evidence of apparent mental or emotional instability.

[52] On July 7, 2006, Mr. Lanthier received a recommendation to suspend the grievor's RRS from Sgt. Neil Dawes, the OIC of departmental security for the North West Region. The memo that Sgt. Dawes sent to him contained the following:

Upon reviewing this file I have concerns regarding four issues:

1) Mr Braun's declared psychological illness is based on his comments. Although attempts have been made to try and medically assess Mr Braun and support his comments of having an psychological illness, I have not received any documentation to date. This still needs to be clarified.

2) Mr Braun's alleged comments of being an "RCMP undercover officer" did influence the security officer in his decision to not charge Mr Braun (see statements of Troy OWENS dated 2006 Feb 13 on pages 22-24).

3) The criminal charges against Mr Braun are serious, especially in view of Mr. Braun's senior position.

4) Mr Braun was not truthful on the Security Interview Form 1020 when he answered "NO" to questions 26 and 27 in 2002 when asked: "Have you ever received psychiatric or psychological treatment?" and "Have you ever sought professional counseling for any other personal problem?"

This is contrary to his 2006-05-10 statement (page 12) where he stated that he has seen several doctors since he was 23 years of age in regards to his psychological problem.

Recommendation:

In view of the four issues listed above I have concerns regarding Mr Braun hold an RCMP Reliability Clearance (RRS) and recommend that his RRS be suspended pending receipts of medical documents, outcome of court proceedings, and any other pertinent information. I will then forward a final report for your decision regarding the future of Mr Braun holding a Reliability Clearance.

...

[Sic throughout]

[53] Mr. Lanthier indicated that, before deciding to suspend the grievor's RRS, he reviewed the file, including the statements of all the witnesses and the grievor and was satisfied that the situation warranted suspending the grievor's RRS until further developments occurred. At that point, Mr. Lanthier was of the view that the grievor's honesty and trustworthiness were questionable but that a further investigation was necessary before he could make a final decision about the grievor's RRS.

[54] After the suspension of the grievor without pay and the suspension of his RRS, events continued to unfold.

[55] The grievor explained that he was denied unemployment benefits and that he appealed the decision. He stated that Mr. Jay invited himself to the hearing before the Employment Insurance Appeal Board to oppose his appeal.

[56] Mr. Jay testified that he received notice of the hearing before the Employment Insurance Appeal Board and was invited to attend. He attended the hearing and answered questions put to him by the Board about the suspension without pay.

[57] Dr. Yaren assessed the grievor on September 29, 2006. At the beginning of his report, Dr. Yaren outlined that the assessment had been requested to assist the employer in "... determining the nature and extent of any psychiatric impairment that may have a bearing upon Mr. Braun's behaviour with respect to the incident and his employment situation in general."

[58] Dr. Yaren described as follows the grievor's version of the February 8, 2006 incident:

...

. . . He readily acknowledges attempting to shoplift some items. This appears to have occurred on impulse without careful thought or planning and certainly not motivated by need, as Mr. Braun had sufficient funds to pay for the items.

Mr. Braun indicates that he attempted to be cooperative with the Loss Prevention personnel at the store but that he also found them to be excessively persistent and intrusive with respect to eliciting personal information from him. Mr. Braun specifically denies claiming that he was an RCMP member or an undercover police officer. Mr. Braun denies contacting Dr. Mary Orr, indicating that it was the Loss Prevention Officer who initiated this call. Mr. Braun does acknowledge giving misleading information with respect to his past history of mental health treatment and treatment providers. He indicates that at the time he considered this to be the most expedient way to extricate himself from this embarrassing situation.

...

[59] Dr. Yaren also referred to previous similar incidents that the grievor had reported to him:

...

Mr. Braun disclosed that approximately one-and-a-half to two years ago he was involved in a similar incident in a Safeway store in Calgary, Alberta. On that occasion Mr. Braun reports that he, while under stress, impulsively shoplifted some food items and was apprehended by Loss Protection Officers. There were no criminal charges but Mr. Braun was banned from returning to the store. Another incident occurred a couple of months earlier at a bookstore in Edmonton where, although Mr Braun did not shoplift any items, he was impulsively and without reason known to him moving merchandise around on the shelves in the bookstore. . . .

...

[60] Dr. Yaren made the following comments and provided the following opinion:

. . . The recent stress, which appears to have precipitated this episode of depression, relates to Mr. Braun's wife incurring a gambling debt of \$40,000.00. . . Additionally, Mr. Braun has

found his job to be quite stressful and he had a tendency to self-medicate with alcohol and over-the-counter sleeping medications.

...

... Dr. Lowther indicated that it appeared to him that the precipitant of this bout of depression was connected with the gambling debt. ...

Opinions

1. Obviously it is untrue that Mr. Braun had been receiving treatment for depression for over twenty years as he had earlier claimed. Mr. Braun readily acknowledges that this was untrue but that he made these statements for the purpose of extricating himself from a difficult and embarrassing situation. ...
2. Contributing factors to the behaviour leading to the February 8, 2006 incident include the presence of depression precipitated by acute stressors in the context of a maladaptive response in terms of excessive alcohol use combined with over-the-counter medications. ... Shoplifting behaviour in depressed individuals, which is otherwise out of character, is a relatively common phenomenon. It may be motivated by ... expressing a cry for help. ...

...

4. The prognosis for recovery, including a restoration of vocational function, is favourable with appropriate treatment and ongoing therapeutic vigilance.

...

6. I suspect that the likelihood of recurrence in terms of involvement in shoplifting behaviour has been reduced by virtue of treatment and cessation of inappropriate use of alcohol.
7. The risk for relapse can be significantly reduced but not entirely eliminated with appropriate treatment and monitoring. ...

Conclusion and summary

Mr. Braun is an individual who appears to have suffered with relatively mild bouts of depression throughout his adult

life. Although he has long recognized this, he had avoided treatment in the past, In the context of work-related and personal family stressors he was coping with depression by self-medicating with alcohol and over-the-counter medications. This led to his involvement in shoplifting behaviour which was otherwise out of character for him. Mr. Braun's admitted misleading comments to the protection officers were motivated by an attempt to extricate himself from the situation and avoid further embarrassment. He specifically denies the allegation with respect to claiming to be an undercover police officer. Mr. Braun continues to undergo appropriate treatment for depression. He will remain at long-term risk for recurrence but the risk for recurrence can be significantly reduced and managed with ongoing appropriate therapeutic intervention.

...

[Sic throughout]

[61] On November 16, 2006, the criminal charges against the grievor were stayed.

[62] Counsel for the grievor questioned Mr. Jay as to why, in light of Dr. Yaren's report and of the fact that the criminal charges had been stayed, he did not lift the grievor's suspension and reinstate him in his functions. Mr. Jay replied that he was informed that the charges were stayed mainly based on Dr. Yaren's report but that, despite that fact, the grievor's RRS had not been reinstated, and as a manager, Mr. Jay had serious concerns as to whether he could have confidence in the grievor's ability to do his job and manage subordinates. On that matter, Mr. Jay explained that, when reading Dr. Yaren's report, he realized that the grievor had lied to him on the following two elements: first, when the grievor told him that he had been receiving treatment for depression since the age of 20 and second, when the grievor told him that no similar incident had occurred in the past. Mr. Jay also stated that he remained troubled by the fact that the grievor had involved one of his subordinates in the incident. At the end of the day, Mr. Jay did not make a recommendation on discipline because the grievor's RRS was revoked, and his employment was terminated because of the loss of his RRS.

[63] On the security issue, Sgt. Dawes updated his investigation in light of the stay of the criminal proceedings and of Dr. Yaren's report. He recommended that the grievor's RRS be revoked. In a memo that he wrote to Mr. Lanthier on December 15, 2006, he explained his recommendation as follows:

...

This is an update to my initial report of 2006 July 07, which resulted in your letter of suspension dated 2006 July 13 which was served on Mr Braun on 2006 July 26. In my initial report I identified four security issues that I had concerns with. This report will provide updated information regarding these concerns and will also provide additional information not previously available.

Concern # 1: Mr Braun's self declared psychological illness claims were unconfirmed.

Update: Mr Braun underwent a RCMP sponsored assessment and a psychiatric report dated October 24, 2006, was prepared by Dr. Stanley Yaren, a Winnipeg psychiatrist. This report is attached for your review. Key points identified in the report are:

-Mr Braun admits to attempting to shop lifting items on 2006 Feb 08.

-Mr Braun denies claiming we was an RCMP officer or undercover officer to store security.

-Mr Braun disclosed he was involved in another similar incident in a Calgary Safeway store about two and a half years ago where he shoplifted items and was apprehended by store security (no charges were laid).

-Mr Braun also admits to a similar incident in Edmonton bookstore two months previous to that were he did not take items but was moving merchandise around on the shelves and came to the attention of store security.

-Mr Braun is presently undergoing treatment for a "Major Depressive Episode" which relates to a \$40,000 gambling debt that his wife has incurred.

-Mr Braun has found his job to be quite stressful and self medicates with alcohol and over the counter sleeping medications.

-Mr Braun reveals a past history of Episodic Mood Symptoms, and bouts of depression throughout his adult life.

-The prognosis for recovery is favourable with treatment, but Mr Braun will remain vulnerable to relapse.

Concern # 2: Mr Braun's alleged comment about being a undercover RCMP officer to store security.

Update: Mr Braun has continued to deny this allegation which is contradicted by statements from Safeway store security.

Concern # 3: Criminal Code Charges:

Update: A PROS query on 2006 Dec 02 revealed that the Criminal Code charges of "Theft Under \$ 5,000" (Sec 334(b) CC) and "Personating a Peace Officer" (Sec 130(a) CC) were "stayed". Further inquiries with "D" Division CROPS on

2006 Dec 15 revealed that an independent Crown Counsel advised that charges were “stayed” based on psychiatric reports that Mr Braun’s untreated depression likely caused or contributed to his conduct and it was not in the public interest for charges to proceed.

Concern #4: Mr Braun was being untruthful during his 2002 Security Interview when he denied psychiatric treatment or other counseling for personal problems (Questions 26 & 27).

Update: It was revealed through Dr Yaren’s report (page 5), that Mr Braun had never received counseling or psychiatric treatment for several years as he claimed to store security when he was apprehended on Feb 08, 2006. He made these comment to store security in order to extricate himself from the situation. It appears that Mr Braun, answered questions 26 and 27 truthfully in 2002 during his security interview.

Ongoing Security Concerns:

- 1) Mr Braun’s past and current history of depression as documented by Dr Yaren’s report.
- 2) The \$ 40,000 gambling debt presently incurred by Mr Braun’s wife.

Comments:

1) Dr Yaren’s report commented that Mr Braun’s depression is a condition that he has suffered from for many years, but his risk for recurrence could be significantly reduced and managed with ongoing appropriate therapeutic intervention, however, he will remain a long-term risk for recurrence.

2) The \$ 40,000 gambling debt that Mr Braun’s wife has incurred is a security concern because it was identified as likely factor that precipitated his depression and the events of Feb 08, 2006, at the Safeway. Although, Mr Braun was not responsible for the gambling debt, it undoubtedly brings significant financial pressure to the family which Mr Braun will have to continue to deal with from an emotional and financial prospective. As long as this gambling debt exists, it raises the question, when determining a subjects reliability, as to “whether the individual might be subject to financial pressures that could reflect on the degree of trust that can be justified, in relation to the duties to be performed ?” (Personal Security Standard (Appendix B) Treasury Board Policy refers).

3) Although the criminal charges against Mr Braun were “stayed” the fact remains, through his own admission, that he did attempt the theft, and has admitted to two other similar incidents where shoplifting behavior was

demonstrated and store security became involved but no charges were laid.

...

[Sic throughout]

[64] Mr. Lanthier testified that he agreed with Sgt. Dawes' recommendation. He stated that the fact that the criminal charges were stayed did not alter his opinion about the revocation of the grievor's RRS because the decision that he had to make concerned security issues, not criminal responsibility. He stated that it was clear to him that, on the balance of probabilities, there had been a theft and that the grievor had personated a police officer to extricate himself from the situation. He was of the opinion that the grievor had not been honest, that he did not get the real story and that the grievor had changed his version of the events several times. Mr. Lanthier stated that he found discrepancies throughout the documents and that he concluded that the grievor's statements had been geared to get him out of the situation. Mr. Lanthier lost trust in the grievor when going through the file; he realized that the grievor kept changing his story. His security concern was about honesty, and he stated that the grievor's position allowed him to have access to the government's financial, personal and other sensitive information.

[65] On January 12, 2007, Mr. Lanthier wrote to the grievor, informing him that Departmental Security for the North West Region had recommended the revocation of his RRS and that he was giving him 14 days to submit written representations before making a final decision on whether his RRS should be reinstated or revoked for cause.

[66] After receiving Mr. Lanthier's letter, counsel for the grievor raised a disclosure issue and alleged that the grievor had not received all the relevant material that he needed to prepare his submissions. On February 26, 2007, Mr. Lanthier wrote to the grievor's counsel and stated that he was surprised by the allegation because it was his understanding that the grievor possessed all the relevant material that he needed to make representations. Nevertheless, he referred the grievor to the Access to Information and Privacy Branch so that he could obtain copies of the material that he was seeking. Mr. Lanthier also indicated in his letter that he would wait for the grievor's representations before making his final decision.

[67] The grievor testified that he made an access to information request but that he never received the security file (Exhibit E-18). In cross-examination, he acknowledged

receiving Sgt. Dawes' report, which is part of the security file, but stated that he received it alone and not with the rest of the material contained in the security file.

[68] Patrick Cost, an analyst in the Access to Information and Privacy Branch of the RCMP, testified. He stated that an access to information request filed by the grievor was received on March 21, 2007. The grievor requested, "all information related to [his] suspension and the subsequent suspension of [his] security clearance and recommendation that [his] clearance be permanently revoked." Mr. Cost explained the process that is followed when an access to information request is made. The request is sent to the section that possesses the requested material. The material is gathered and sent to the Access to Information and Privacy Branch. All the documents are then scanned, and the file is assigned to an analyst. The analyst reviews the documents and identifies those that can be released and those that should be withheld or vetted in accordance with the *Privacy Act*, R.S.C. 1985, c. P-21.

[69] Mr. Cost was the analyst assigned to review the documents that the grievor requested. He explained that the security file (Exhibit E-18) contains all the documents that he reviewed. He tabled a recommendation sheet that outlined the pages of Exhibit E-18 that were partially vetted or that did not form part of the package prepared for the grievor. The record of activities shows that, on May 17, 2007, the grievor asked for an update of his request. Mr. Cost stated that he prepared the documents for the grievor and that he mailed the package via Xpresspost™ on June 5, 2007. Mr. Cost confirmed that only one package was sent to the grievor from the Access to Information and Privacy Branch. Mr. Cost also explained that he cannot confirm with certainty that the grievor received the package. However, he explained that, when Xpresspost™ is used, the person receiving the package has to sign for it. When Canada Post is unable to deliver the package or obtain the signature of the receiver within two weeks, the package is returned to the expeditor. Mr. Cost stated that he was not able to obtain a signature slip from Canada Post because they do not keep records that far back. He affirmed that the package was not returned to his office and that the grievor never contacted the Access to Information and Privacy Branch to notify it that he did not receive the documents.

[70] On August 7, 2007, the grievor provided his written representations. The letter was received at the RCMP on August 23, 2007. By that time, Mr. Lanthier had retired and had been replaced by Pierre Giguère.

[71] Mr. Giguère testified. He indicated that he received the grievor's written submissions on August 23, 2007, which contained the following general assertion:

...

Further to your letter dated 07/01/12, informing me, that the NCO i/c Departmental Security -NWR, has recommended the revocation of my RCMP Reliability Status, I would like to take this opportunity to respond to this matter, now, that we have received his report, dated 06/12/15, through the Access to Information process.

The NCO i/c Departmental Security-NWR, S/Sgt. Neil Dawes bases his recommendation on three "Ongoing Security concerns", which contain inaccuracies, misinterpretations and gaps in logic, that individually and collectively invalidate his recommendation for revocation. In addition, his report fails to include the most relevant factors pertaining to my current security reliability status. These include: my ongoing demonstrated commitment to addressing the risk factors associated with my medical condition, through an approved treatment plan, the recognition that there have not been any recurrence of psychological episodes since becoming involved in treatment and my exemplary twenty-five year security reliability record, in the workplace.

...

[Sic throughout]

[72] In his submissions, the grievor further commented on each of the risk factors identified in Sgt. Dawes' report.

[73] About the risk of recurrence, the grievor stated that Sgt. Dawes misrepresented Dr. Yaren's prognostic in a way that suggested a higher risk than was intended. Sgt. Dawes omitted mentioning or considering that the grievor had been actively pursuing extensive treatment for more than 18 months, during which he had not experienced any recurrence. The grievor stated that it demonstrated his long-term commitment to managing the risk factors associated with his condition and that the treatment had been effective in ensuring that he remained a low risk. The grievor further asserted that comments from Dr. Yaren and Dr. Lowther demonstrating that he should be considered a low risk of recurrence were not properly considered by Sgt. Dawes.

[74] About the financial pressures, the grievor stated that Sgt. Dawes suggested that his wife's debt had created significant financial problems for him and his family. He asserted that that was inaccurate because he had adequate resources available to deal with the situation. The grievor referred to the following comment by Sgt. Dawes: "... it raises the question, when determining a subjects [sic] reliability, as to whether the individual might be subject to financial pressures that could reflect on the degree of trust that can be justified, in relation to the duties he performed?" He replied in the following manner:

...

... These comments do not represent anything other than unsubstantiated speculation, that is not supported by my performance. I have been a budget manager for more than twenty-five years in the Federal Public Service. During this time I have managed national, regional and provincial budgets in excess of two million dollars and have always done so in a competent and professional manner, that has earned me considerable recognition, national awards and promotions to the executive level. The suggestion, that my wife's incurring debt, may result in me becoming involved in inappropriate financial dealings and therefore constituting a risk to the RCMP, is contradicted by my track record and is therefore completely without merit.

...

[75] About the shop lifting behaviour", the grievor wrote the following:

S/Sgt. Dawes suggests, that in even though I have received and continue to be involved in long-term treatment of my conditions, that I nevertheless represent a considerable security risk. He arrives at this conclusion, in spite of the prognosis of experienced medical professionals like Drs. Yaren and Lowther, both of whom have categorize me as a low risk and the fact that I have not been involved in any similar irrational behaviour for more than eighteen months. S/Sgt. Dawes is not a medical expert and his dismissal of the professionals prognosis's in this case, discredit his report's analysis and recommendation and demonstrate his lack of objectivity and knowledge about the nature of depressive conditions or the successful management of risk factors, associated with these types of conditions, through appropriate treatment.

...

[Sic throughout]

[76] The grievor also outlined the fact that Dr. Yaren had opined that the erratic behaviour in which the grievor had engaged was a “cry for help” and that it did not represent criminal intent.

[77] The grievor concluded with the following comments:

...

. . . The suggestion that I lack integrity, reliability; trustworthiness reflects an attempt to discredit my character and to criminalize a medical matter. I suffer from a diagnosed medical condition, for which he had not previously received treatment, that has in the past resulted in my experiencing psychotically episodes that have included a variety of “cry for help” behaviours. I have voluntarily taken steps to manage and control the condition and by all accounts, have and continue to be successful.

Also, S/Sgt. Dawes fails to mention, that I have never been responsible for a single security breach in the workplace, in my twenty-five year career, even when not receiving treatment for my medical condition. To suggest, that after now receiving extensive treatment, that I suddenly represents a security risk, is ludicrous. It should also be recognized that my position with the RCMP is not a sensitive operational position, but an administrative position that carries a basic administrative reliability security clearance. To suggest, that I could not be relied on fulfill the duties of this position, in spite of my exemplary record and the further the risk reduction that has resulted from treatment, is completely ridiculous.

In conclusion, NCO i/c Departmental Security-NWR, recommendation that my RCMP Reliability Status be revoked, cannot be justified on the basis of the concerns that he raises. These “concerns” are based on misrepresentation, broad speculation, flawed analysis and the omission of important factors that have a direct bearing on my risk profile. . . .

...

[Sic throughout]

[78] Mr. Giguère explained that, when the grievor’s representations were received, the file was reviewed by an analyst in the Personal Security Branch, Sylvain Lebel. Upon completing his review, Mr. Lebel submitted his report to his superior, André Drouin, who reviewed and approved the report. Mr. Lebel wrote a memo to Mr. Giguère in

which he discussed the elements submitted by the grievor and provided his recommendation that the grievor's RRS be revoked.

[79] Mr. Giguère stated that, before making the final decision, he also reviewed the file himself and that he agreed with Mr. Lebel's recommendation. Mr. Giguère stated that he had serious concerns about the grievor's truthfulness. He indicated that the problem did not lie with the shoplifting issue, which he believed to be a cry for help. Mr. Giguère indicated that he had issues with the following:

- Dr. Yaren stated in his report that the debt incurred by the grievor's wife was one of the elements that had prompted the incident; yet, in his submissions, the grievor stated that it was not an issue.
- He found that the grievor was trying to minimize the importance of his position. However, in his view, the grievor held an important position, which involved access to protected and sensitive information. Furthermore, it did not accord with Dr. Yaren's report, which outlined that the grievor found his position stressful.
- The grievor addressed the shoplifting issue but omitted addressing the issue of personating a police officer. However, he was on the view that the grievor had personated a police officer.
- The grievor was not being truthful when he originally stated that no similar incidents had occurred and that he had been receiving treatment for 20 years. In fact, he waited until the third incident and until he was in a difficult situation before committing to treatment.
- The grievor involved Dr. Orr.
- The grievor failed to advise his superior about the incident and, when confronted by his superior, was not truthful.

[80] Mr. Giguère also explained that, when reviewing a file, he looks at the following: whether the individual has admitted or denied the damages to the organization and whether the individual did something to lessen those damages.

[81] On November 6, 2007, Mr. Giguère wrote to the grievor and informed him that his RRS was revoked. The letter reads as follows:

...

*You raised three concerns which I will now address. The “**Risk for Recurrence**” is described by your psychiatrist, Dr Lowther, as a “current low risk status”. Dr Yaren stated that “Mr Braun continues to undergo appropriate treatment for depression. He will remain a long-term risk for recurrence but the risk for recurrence can be significantly reduced and managed with ongoing appropriate therapeutic intervention”. Dr Yaren’s opinion provides not only the status but also the condition for mitigating the risk of recurrence. I shall consider it in my final decision.*

*The “**Financial Pressures**” was raised as a security concern as well as a possible factor that lead to the shoplifting incident.*

Dr. Yaren’s report mentioned that “contributing factors to the behaviour leading to the February 8, 2006 incident include the presence of depression precipitated by acute stressors.” Dr Yaren’s report also indicated that “the recent stress, which appears to have precipitated this episode of depression, relates to Mr Braun’s wife incurring a gambling debt of \$40,000.00”. Yet, you are now indicating to us that this debt did not create a financial crisis for you or your family, as you had adequate resources available to deal with this situation.

*I understand from your letter that “**Shop Lifting Behaviour**” is a variety of “cry for help” and that the incident you were involved in February 8, 2006 was linked to a medical condition. I believe it was, however, I find many of your actions preceding and following the incident can not be attributed to your medical condition.*

You disclosed to Dr Yaren that “approximately one-and-a-half to two years ago you were involved in one similar incident” where you were banned from returning to the store and another one that resulted in a warning from Loss protection employees. These incidents would have occurred in late 2003 or early 2004. According to this report, “you did contact an EAP (Employee Assistant Program) worker and was referred to a psychologist but did not follow through with any treatment.” Therefore, you had the opportunity at that time to deal with your medical situation but you failed to do so.

You also acknowledged to Dr Yaren that you made false statements, about receiving treatment for depression for over twenty years, “for the purpose of extricating yourself from a difficult and embarrassing situation” at the time of the February 2006 incident. In addition to that, you misled the

Loss Prevention Officers stating that you were a former undercover officer.

When you contacted Dr ORR to apologize for getting her involved in the matter, she suggested that you needed to advise your supervisor, but you failed to do so. Chief Superintendent Garry Jay attended Winnipeg where you readily indicated that you were apprehended. However, Jay had to confront you to obtain all details related to the incident. Thus, you were not forthcoming in admitting the details of the incident.

*I have examined all information pertaining to this case and I find that your actions raised concerns about your trustworthiness and reliability. Thus, I find sufficient cause to **revoke** your RCMP reliability status effective the date of this letter.*

...

[Sic throughout]

[Emphasis in the original]

[82] Before closing the summary of the evidence, I wish to note an objection to evidence that I sustained during the cross-examination of Mr. Jay and the testimony-in-chief of the grievor. Counsel for the grievor wanted to question Mr. Jay and the grievor about a meeting on August 23, 2006 between the grievor, his counsel, Mr. Jay and Mr. Laurendeau. Counsel for the employer objected to that line of questioning on the grounds that the meeting was held for the purpose of trying to settle all disputes that had arisen and that those settlement discussions were privileged. At first, counsel for the grievor denied that the discussions were settlement discussions but came to acknowledge that the discussions were about the settlement of the grievor's employment relationship and the grievances. Exhibit E-13, which is a letter that counsel for the grievor sent to Mr. Jay and that triggered the August 23 meeting, contains the following, which provides an indication of the purpose of the meeting:

...

*In discussing the matter in detail with Mr. Braun, although he would desire to return to his current employment as soon as possible, nevertheless he recognizes that there has been a breakdown in the relationship and that his return to work has the potential of becoming awkward. As a result, in accordance with your suggestion that *The Royal Canadian**

Mounted Police and Treasury Board may be prepared to enter into discussions as to how to bring this matter to an acceptable conclusion, Mr. Braun has indicated that he concurs and perhaps an alternative solution can be discussed between the parties.

As a result, we would be prepared to meet with you and perhaps a representative of the Treasury Board. . . At that time, all avenues can be explored.

. . .

[83] After hearing both parties, I decided that the discussions held during the meeting were about a settlement of the issues relating to the grievances and the employment relationship and that they were privileged.

III. Summary of the arguments

A. For the employer

[84] The employer contended that I do not have jurisdiction over the grievances.

[85] First, the employer submitted that the jurisdiction of an adjudicator under the *Act* is limited to matters falling within the parameters of section 209. The employer outlined as follows the specific paragraphs of that section under which the grievor referred his grievances to adjudication:

- the grievances challenging the suspension and the revocation of the grievor's RRS were referred to adjudication under paragraph 209(1)(b) of the *Act*, which deals with "a disciplinary action resulting in termination, demotion, suspension or financial penalty" and
- the grievance challenging the suspension without pay was referred to adjudication under subparagraph 209(1)(c)(i) of the *Act*, which deals with "demotion or termination under paragraph 12(1)(d) of the *Financial Administration Act* for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct. . . ."

[86] The employer argued that a grievance can be dealt with only under the specific provision under which it was referred to adjudication. Since the grievance against the suspension without pay was referred to adjudication under subparagraph 209(1)(c)(i) of the *Act*, it should be dismissed on its face for lack of jurisdiction because the

measure at issue is not a termination. The employer contended that the suspension without pay cannot be viewed as tantamount to the termination of the grievor's employment. The employer submitted that, during his suspension without pay, the grievor remained an employee of the RCMP and that there was no breach of the employment relationship. The decision to terminate the grievor was made later, in April 2008, and was a separate decision.

[87] In the alternative, and without prejudice its position describes in paragraph 86, the employer submitted that the grievance challenging the suspension without pay, like the grievances challenging the suspension and the revocation of the grievor's RRS, should be dismissed for lack of jurisdiction because they do not concern matters that fall within the parameters of paragraph 209(1)(b) of the *Act*, which deals with disciplinary measures.

[88] The employer submitted that, for me to take jurisdiction under paragraph 209(1)(b) of the *Act*, the grievor must prove the following two elements: that there was a disciplinary action and that the action resulted in a termination, demotion, suspension or financial penalty. The employer further submitted that the first condition must be met before examining what resulted from the disciplinary action.

[89] The employer argued that the three decisions at issue were administrative in nature. With respect to the distinction between an administrative and a disciplinary measure, the employer referred me to *Canadian Labour Arbitration*, 4th Edition, in which authors Brown & Beatty outlined that discipline is made in ". . . an intention to correct bad behaviour on an employee's part by punishing the employee in some way," whereas "[w]here an employee's behaviour is not culpable and/or the employer's purpose is not to punish, whatever action is taken will generally be characterized as non-disciplinary."

[90] The employer further submitted that the Board's case law has recognized that revoking reliability status is an administrative decision, and the employer relied on *Leblanc v. Treasury Board*, PSSRB File No. 166-02-25267 (19940615).

[91] The employer discussed each of the three decisions.

[92] With respect to Mr. Lanthier's decision to suspend the grievor's RRS, the employer contended that it established that the decision was based on security

concerns and that it did not aim at imposing discipline on the grievor. Furthermore, Mr. Lanthier did not even have the authority to impose discipline, and his sole authority dealt with the security status of employees. The employer outlined that Mr. Lanthier explained the purpose of the Treasury Board *Government Security Policy* and the responsibility that rests with departments to ensure that they apply that policy and address security concerns. The employer also referred to the RCMP *Policy* and argued that Mr. Lanthier acted in accordance with his responsibility under and in accordance with the terms of the RCMP *Policy* and the Treasury Board *Government Security Policy*.

[93] When Mr. Lanthier decided to suspend the grievor's RRS, his decision was motivated by the following:

- The grievor had been apprehended for shoplifting.
- The grievor was suspected of personating a police officer.
- The grievor had involved Dr. Orr, one of his subordinates.
- Criminal charges of theft under \$5000 and personating a police officer had been laid against the grievor.

[94] The employer contended that the allegations raised serious concerns about the grievor's trustworthiness, honesty and integrity. The employer submitted that the RRS was not about a person's ability to perform the duties of his or her position but about honesty and trustworthiness. The employer also contended that the specific mandate of a police force warrants a higher standard of integrity for all its employees.

[95] The employer further submitted that the decision to suspend the grievor's RRS was an interim decision based on the information that it had at that time, which warranted further investigation before a final decision could be made. The employer argued that that decision was made to protect the interests of the RCMP, not to punish or discipline the grievor. The employer submitted that the grievor failed to prove that that decision was disciplinary.

[96] The employer submitted that the evidence also demonstrated that Mr. Jay's decision to suspend the grievor without pay was administrative in nature. The employer contended that the decision was consistent with the administrative manual,

specifically with “Chapter 13. Discipline - Public Service Employees - section H.1.e. of the Guidelines For Managers.”

[97] The employer also insisted that the language used by the grievor in his grievance (“I was placed on administrative suspension”) indicated that the grievor understood that the suspension was administrative.

[98] The employer relied on *Canada (Attorney General) v. Basra*, 2008 FC 606, and on *Canada (Attorney General) v. Frazee*, 2007 FC 1176, about the necessity to consider the employer’s intention in order to determine whether a decision was administrative or disciplinary in nature. The employer argued that, in this case, all evidence points to an administrative decision.

[99] The employer argued that the suspension without pay was not motivated by the desire to discipline the grievor but that it was triggered by the following administrative considerations: the grievor’s RRS had been suspended and, therefore, he no longer met an essential condition of employment. Criminal charges had been laid against him; and the question of the impact of the grievor’s alleged medical condition on his behaviour warranted further investigation. The employer argued that Mr. Jay stated that, when he decided to suspend the grievor without pay, he did not have all the information he needed to make a recommendation about discipline but judged that the situation was serious and that he needed to get to the bottom of it.

[100] The employer discussed the grievor’s allegation that on May 1, 2006, Mr. Jay had told him that he intended to terminate his employment. The employer submitted that the grievor’s version contradicted Mr. Jay’s and that I should consider Mr. Jay’s version, which was more credible. The employer added that the suggestion that Mr. Jay had already decided to recommend the grievor’s termination was not consistent with his decision to ask the grievor to undergo a medical assessment and to wait for the results of that assessment before making a recommendation on discipline.

[101] The employer argued that the decision to revoke the grievor’s RRS was also administrative in nature. The employer submitted that Mr. Giguère’s role was not to discipline but to deal with security issues. The employer emphasized that the security process is distinct and independent from the disciplinary process.

[102] The employer contended that the decision to revoke the grievor's RRS was not motivated by the intent to discipline the grievor but by real and serious security considerations, and it was protecting the RCMP's interests.

[103] The employer further contended that the process that led to the decision to revoke the grievor's RRS was fair and that there was no breach of procedural fairness. On that point, the employer argued that the decision was made following a thorough investigation, conducted by the Regional Unit of Departmental Security, during which all relevant material was reviewed, all parties involved gave their versions of the events and the medical evidence was considered. In addition, the grievor was provided with the opportunity to make submissions before Mr. Giguère made his final decision.

[104] The employer replied to the grievor's allegation that he had not received the security file following his access to information request. The employer contended that the evidence leads to the conclusion that the grievor received the file. However, in the event that concluded that he did not, the undisputed evidence established that the grievor possessed the key documents, namely, the LPOs' statements, Dr. Yaren's report and Sgt. Dawes' report, enabling him to make meaningful and complete submissions, which he did in his letter of August 7, 2007.

[105] The employer refuted the grievor's proposition that there was a breach of procedural fairness because neither Mr. Lanthier nor Mr. Giguère met with the grievor before making their decisions. The employer submitted that procedural fairness is not a fixed concept that requires a direct interview in all circumstances. The key point of procedural fairness is the right to be heard, orally or through written submissions, and the grievor was provided with the opportunity to submit his version of the events and to reply to the employer's allegations against him.

[106] The employer referred me to *Gill v. Treasury Board (Department of Human Resources and Skills Development)*, 2009 PSLRB 19, and distinguished the facts that led the adjudicator in that case to conclude that there was a breach of procedural fairness from the facts in this case.

[107] The employer concluded that the appropriate recourse for challenging the three decisions in question would have been seeking judicial review before the Federal Court. On that matter, the employer relied on *Myers v. Canada (Attorney General)*, 2007 FC 947.

B. For the grievor

[108] The grievor contended that I should take jurisdiction because the grievances concern decisions that were disciplinary in nature despite their characterization as administrative by the employer. For the grievor, it is clear that the decisions to suspend him without pay, to suspend and finally to revoke his RRS were intentional and that they amount to disguised discipline.

[109] Counsel for the grievor argued that the grievor strived to explain to the employer what happened during the February 8, 2006 incident and that, although there could have been an initial perception of wrongdoing, after a brief period the measures should have been withdrawn and the grievor should have been reinstated in his position. The grievor contended that the employer did not lift the suspension without pay and did not reinstate his RRS because its intention was disciplinary. The evidence leads to one conclusion: the grievor was going to be terminated one way or another.

[110] The grievor raised several points that, in his opinion, lead to the conclusion that the employer's intention was to discipline him.

[111] First, to remain independent, the RCMP should not have conducted the criminal investigation. When it was evident that the grievor was denying the allegations of shoplifting and of impersonating a police officer, the RCMP should have referred the investigation to the Winnipeg Police Service.

[112] Second, the evidence clearly established that Mr. Jay, who was the key actor, intended from the beginning to terminate the grievor's employment. From the grievor's point of view, Mr. Jay's intent to impose discipline transpired as early as February 2006 when he wrote the following to the Commissioner on February 20, 2006: "[t]hese evaluations will be completed before any recommendations are made to Treasury Board in relation to disciplinary action which will be taken." The grievor also referred to the RCMP's administrative manual, on which the employer relied to impose a suspension without pay, which is titled "Discipline" and that provides guidance on the discipline process.

[113] Counsel for the grievor further contended that Mr. Jay's intention to terminate the grievor's employment was clearly enunciated during the May 1, 2006 meeting when

he confronted the grievor, who refused to resign. The grievor inferred that it was his refusal to resign that triggered the criminal investigation. The grievor was of the view that, when Mr. Jay transformed his suspension with pay into a suspension without pay, he had a vendetta against him and imposed on him a measure that amounted to a termination. He no longer received salary or benefits and could not access his office.

[114] Counsel for the grievor submitted that Mr. Jay's reaction when he was informed that a medical assessment conducted by Health Canada would be focused on the grievor's ability to perform his duties also reveals his intention; he cancelled the appointment because he did not want the grievor to return to his position. Counsel for the grievor submitted that Mr. Jay's choice to have the assessment done by a physician who was under contract with the RCMP demonstrated a bias on his part.

[115] Counsel for the grievor also submitted that Mr. Jay invited himself to the Employment Insurance Appeal Board to oppose the grievor's request for benefits.

[116] Counsel for the grievor also invoked the grievor's initial discussions with Dr. Yaren during which Dr. Yaren referred to prejudicial and inaccurate comments made against the grievor by the RCMP, namely, that he had a history of discipline and was manipulative.

[117] Counsel for the grievor submitted that, by November 2006, several elements should have led to the reinstatement of the grievor in his position, yet the employer chose to maintain the suspension without pay and later to revoke his RRS. At that point, the criminal charges had been stayed, and Dr. Yaren's and Dr. Lowther's reports had clearly established that the grievor was under treatment for his condition, that he had not had any recurrence and that he was at low risk of recurrence. The employer's reaction of continuing the process that led to the revocation of the grievor's RRS shows that it intended to terminate the grievor.

[118] Counsel for the grievor also contended that there was a breach of procedural fairness in the process that led to the revocation of the grievor's RRS, which clearly demonstrates that the intent was disciplinary. On that matter, the grievor insisted that he was never interviewed by Messrs. Lanthier or Giguère and that, therefore, he did not have a fair opportunity to orally provide his submissions before the employer decided to revoke his RRS. The grievor added that, when he was offered an opportunity to provide written submissions, Mr. Giguère disregarded his explanations and

clarifications and retained parts that were inaccurate. The grievor also contended that he never received the security file that he requested through the access to information process, which, in his view, constitutes another breach of procedural fairness because he did not have access to all the relevant material when he prepared his written submissions.

[119] Counsel for the grievor commented on the case law referred to by the employer and distinguished those cases on the facts.

C. Employer's rebuttal

[120] The employer insisted that there is no evidence that could support a conclusion of a vendetta against the grievor on the part of Mr. Jay. The employer further submitted that the criminal investigation and the internal investigation were two distinct and separate processes.

[121] The employer also rejected the allegation that Mr. Jay was biased when he chose not to have the grievor assessed by Health Canada, stating that the evidence did not support such an allegation.

[122] The employer dismissed the allegation that Mr. Jay attended the appeal hearing about the unemployment benefits without being invited and insisted that the evidence established that he had received a notice of the hearing and that he was invited to appear.

IV. Reasons

[123] The jurisdiction of adjudicators is strictly defined and limited by the *Act*. Although the legislator has provided employees with a broad entitlement to file grievances, the list of the matters that can be referred to adjudication is far more limited.

[124] Section 208 of the *Act* sets out as follows the matters that can be grieved by an employee:

208. (1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved

(a) by the interpretation or application, in respect of the employee, of

(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or

(ii) a provision of a collective agreement or an arbitral award, or

(b) as a result of any occurrence or matter affecting his or her terms and condition of employment.

...

[Emphasis added]

[125] Section 209 of the Act, for its part, specifies the types of grievances that can be referred to adjudication. It reads as follows:

209. (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;

(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;

(c) in the case of an employee in the core public administration,

(i) demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or

(ii) deployment under the Public Service Employment Act without the employee's consent where consent is required; or

(d) in the case of an employee of a separate agency designated under subsection (3), demotion or termination for any reason that does not relate to a breach of discipline or misconduct.

...

[126] To be adjudicable, a grievance must deal with the application or interpretation of a collective agreement or an arbitral award, a major disciplinary action, a demotion, a termination, or a deployment. An employee filing a grievance about a “. . . matter affecting his or her terms and conditions of employment” that does not fall within the parameters of section 209 of the *Act* is not left without recourse, but the adjudication process is not the appropriate forum. The grievor can always seek judicial review before the Federal Court of the employer’s decision at the final level of the grievance process.

[127] I will start by dealing with the employer’s proposition that the grievance against the suspension without pay can be dealt with only under subparagraph 209(1)(c)(i) of the *Act*, which deals with termination, because it was referred to adjudication under that specific subparagraph. The employer added to that proposition that the grievance should be dismissed on its face because a suspension without pay is not a termination and is not tantamount to a termination.

[128] First, I do not consider that the suspension without pay imposed on the grievor was tantamount to the termination of his employment. I have already expressed myself on that matter in the preliminary decision, 2009 PSLRB 129. During the preliminary hearing, counsel for the grievor argued that the suspension without pay imposed on the grievor was tantamount to a termination of employment and that, therefore, the grievance dealing with the suspension without pay should be construed as being the grievance dealing with the “termination,” which was clearly referred to adjudication and that fell within the parameters of section 209 of the *Act*. I rejected that proposition and I find it useful to reproduce the following paragraph from the decision:

. . .

44 First, I disagree with the grievor’s proposition that an indefinite suspension without pay is tantamount to a termination and that, therefore, filing a grievance challenging the suspension without pay amounts to challenging the termination. In this case, the employer made the following two distinct decisions: an interim decision to suspend the grievor without pay in July 2006 and a definitive decision to dismiss the grievor in April 2008. Although both decisions were linked to and originated from a unique set of events, they were made at different times and generated different effects on the employment relationship. Therefore,

both decisions require separate grievances and in fact, separate grievances were filed. The grievor filed a grievance against his suspension without pay on August 28, 2006, and he filed a grievance against the termination of his employment on April 18, 2008. If the grievor was of the opinion that the grievance he had filed against his suspension without pay captured the termination of his employment, why did he file another grievance on April 18, 2008 against the termination?

...

[129] Counsel for the grievor reiterated the same proposition during this hearing. I rely on my initial decision and wish to add the following comments. The evidence established that the suspension without pay was an interim measure that was prompted by the following: the allegations of shoplifting and the personation of a police officer, the suspension of the grievor's RRS, and the criminal charges of theft and personation of a police officer. Although the grievor was deprived of his salary, his benefits and the right to access the employer's premises while suspended, the employment relationship was not yet severed. First, Mr. Jay, who imposed the suspension without pay, did not have the authority to terminate the grievor's employment. Second, several elements illustrate that the employer's decision was not final and that it was waiting additional information before making a final decision about the employment relationship. When it suspended the grievor without pay, the employer was waiting for the medical assessment, the results of the criminal proceedings and the final determination concerning the grievor's RRS. Third, the termination was imposed after several events unfolded, all of which came after the decision to suspend the grievor without pay. Finally, the decision to terminate the grievor's employment was motivated by a different consideration than the decision to suspend him; it was based solely on the fact that the grievor no longer met an essential condition of employment due to the loss of his RRS.

[130] For those reasons, I conclude that the grievance against the suspension cannot be adjudicated under subparagraph 209(1)(c)(i) of the *Act* because it does not concern a termination or demotion.

[131] However, unlike the employer, I do not consider it all that clear that the grievance against the suspension without pay was referred to adjudication only under subparagraph 209(1)(c)(i) of the *Act*. I mentioned in 2009 PSLRB 129 that there had been inconsistencies and confusion about the notices of referral to adjudication and

the documents attached to them. I do not find it necessary to revisit the confusion, but suffice it to say that the original notice of reference to adjudication referred to paragraph 209(1)(b) and subparagraph 209(1)(c)(i). Therefore, the grievance can be considered under subparagraph 209(1)(b).

[132] Had I concluded that the grievance against the suspension without pay had been referred to adjudication only under subparagraph 209(1)(c)(i) of the *Act*, I would have nevertheless concluded that, in this case, it was the result of a technical irregularity that should not, according to subsection 241(1), invalidate the referral to adjudication.

[133] I will now address the question of whether the grievances can fall under subparagraph 209(1)(b) of the *Act*, which refers to disciplinary measures.

[134] The grievor alleges that the three decisions at issue were disciplinary in nature. In addition, the grievor contends that Mr. Jay's decision to suspend him without pay was made in bad faith and as a result of a vendetta against him. With respect to the decisions to suspend and to revoke the grievor's RRS, the grievor also contends that the employer breached his right to procedural fairness. For the following reasons, I consider that the evidence does not support the grievor's assertions.

[135] It is generally accepted that a suspension without pay pending investigation and the suspension or revocation of a reliability status are not *a priori* deemed disciplinary actions. However, that general assumption does not exclude the concept of disguised discipline. As the Federal Court outlined in *Frazer*:

...

[i]t is accepted, nonetheless, that how the employer chooses to characterize its decision cannot be by itself a determinative factor. The concept of disguised discipline is a well known and a necessary controlling consideration which allows an adjudicator to look behind the employer's stated motivation to determine what was actually intended. . . .

...

[136] In *Canadian Labour Arbitration*, Brown & Beatty discussed as follows the difference between disciplinary and administrative measures:

...

In deciding whether an employee has been disciplined or not, arbitrators look at both the purpose and effect of the employer's action. The essential characteristic of disciplinary action is an intention to correct bad behaviour on an employee's part by punishing the employee in some way. An employer's assurance that it did not intend its action to be disciplinary often, but not always, settles the question.

Where an employee's behaviour is not culpable and/or the employer's purpose is not to punish, whatever action is taken will generally be characterized as non-disciplinary. On the basis of this definition, arbitrators have ruled that suspensions . . . pending the resolution of criminal charges . . . the revocation of a civil servant's "reliability status". . . have all been characterized as non-disciplinary. . . .

. . .

[137] The Federal Court in *Basra* and in *Fraze* indicated that the primary factor in determining whether an employee was disciplined concerns the intention of the employer. In *Fraze*, the Court stated that "[t]he question to be asked is whether the employer intended to impose discipline and whether its impugned decision was likely to be relied upon in the imposition of future discipline. . . ."

[138] To decide the jurisdictional issue, I must determine whether the decisions to suspend the grievor without pay and then to suspend and revoke his RRS were administrative or whether they amounted to disguised discipline.

[139] It is important to note that my role is not to decide whether I agree with the decisions or whether they were reasonable. I do not sit in appeal or in judicial review of those decisions. I am dealing with an objection to my jurisdiction. The same situation prevailed in *Fraze*, where the Federal Court, commenting on the case law, expressed the following:

. . .

[21] The case authorities indicate that the issue is not whether an employer's action is ill-conceived or badly executed, but, rather, whether it amounts to a form of discipline involving suspension. . . .

. . .

[140] I can take jurisdiction over the grievances only if the evidence supports a conclusion of disguised discipline. In addition, as the Federal Court stated in *Frazer*, “. . . an employee’s feelings about being unfairly treated do not convert administrative action into discipline. . . .”

[141] In addition to his contention that the decisions were disciplinary in nature, the grievor alleged that the employer acted in bad faith and that there were serious breaches of procedural fairness. Given that the only issue to be determined is whether the decisions were disciplinary in nature, I am of the view that the allegations of bad faith and lack of procedural fairness cannot stand alone but could be considered as indicators of the employer’s alleged disciplinary intention.

[142] I will now apply those principles to the three decisions.

[143] The grievor argued that several items illustrate that Mr. Jay clearly intended to discipline him and that he had a vendetta against him.

[144] Before discussing each of the points raised by the grievor, I will address a credibility issue. Counsel for the grievor relied largely on the grievor’s versions of the February 10 and the May 1 meetings to support the allegation that Mr. Jay had a vendetta or that he intended to discipline the grievor. The grievor’s and Mr. Jays’ respective versions of those meetings differ considerably, and I need to determine which version of the facts I will retain. For the reasons that follow, I consider the testimony of Mr. Jay to be more credible than the grievor’s testimony.

[145] First, I have no issue with Mr. Jay’s credibility. His report of the versions of the LPOs and Dr. Orr accorded fully with the statements of the LPOs and Dr. Orr. Mr. Jay’s version of the February 10, 2006 meeting with the grievor accorded with the notes that he made following the meeting and with the briefing note that he sent to the Commissioner. His version of the May 1 meeting was coherent with his actions. First, he had requested that the grievor be assessed by a psychiatrist to measure the impact of the grievor’s medical condition on his behaviour, and he was awaiting the result of that assessment before making a recommendation on discipline. Second, he left the grievor on leave-with-pay status until after the criminal charges were laid. Why would Mr. Jay have kept the grievor on suspension with pay if he had the intention of terminating his employment, considering that the application of the administrative guidelines would have commanded a suspension without pay? Finally, I did not get the

sense that Mr. Jay had any animosity towards the grievor or that he wanted to terminate him.

[146] However, I do have credibility issues with the grievor. Some elements of his testimony before me lead me to conclude that he is not always truthful.

[147] First, I believe that the grievor was not truthful during his testimony when he described the February 8, 2006 incident, particularly when he testified about the issue of personating a police officer. Before his testimony, the grievor had provided his version of the February 8, 2006 incident on the following three occasions: when he met with Mr. Jay on February 10, 2006, when he provided his written version in his February 14, 2006 letter to Mr. Jay and when he was interviewed by the investigators tasked with conducting the criminal investigation. When he wrote to Mr. Jay on February 14, 2006, and when he was interviewed by the investigators, the grievor knew that he was suspected of personating a police officer and that the LPOs had stated that he had represented himself as an undercover police officer. Considering the situation, it was in his interest to provide a version of the incident that was as detailed as possible and that did not omit anything that could rebut the LPOs' version of the incident. Yet, in each of his previous versions, the grievor never stated that he clearly told the LPOs that he was not a police officer. On the contrary, the answers that he stated he had given to the LPOs' questions were evasive.

[148] The version that the grievor offered on those occasions differs considerably from the one he offered at the hearing. During his testimony, the grievor indicated that he clearly told the LPOs four times that he was not a police officer. He described the same questions from the LPOs that he had reported in his previous versions but provided me with a different version of his answers.

[149] The grievor stated that, when the LPO pulled his business card from his suit pocket, the LPO said to him, "Ho, you are with the RCMP, let me see your badge." He stated that he replied to the LPO that he was not a police officer and that he was the director of employee strategies. The grievor further stated that the LPO continued and asked him if he was an undercover police officer. He said that he replied that he was not a police officer and that the situation had nothing to do with the RCMP. The LPO purportedly asked him what his work was at the RCMP, and he stated that he gave him a summary of what his duties were.

[150] The LPO then purportedly asked the grievor to accompany him to the grievor's car in order to retrieve some identification. The grievor said that, when he opened the trunk of his car to get his wallet out of a bag, the LPO saw that his bag had the RCMP emblem on it and asked if he had a firearm. The grievor stated that he replied that he did not have a firearm, that he was not a police officer and that he was a public servant.

[151] The grievor explained that, at one point, he was left with another LPO. When the first LPO came back, he told the grievor that he knew that he was an undercover officer, that he could tell him and that he had no intention to "mess up" his career. The grievor stated that, again, he told the LPO that he was not an undercover officer.

[152] I do not know which version, if any, is true, but the introduction, this late in the process, of a new version of the incident that presents the facts in a much more favourable angle for the grievor leads me to suspect that the grievor is ready to change his version of the events to serve his interests.

[153] I also consider that the grievor's testimony about his access to information request was not truthful. In his testimony, the grievor stated that he never received any material following his access to information request. Yet, in cross-examination, and after being confronted with his letter of August 7, 2007 in which he stated that "... I would like to take this opportunity to respond to this matter, now, that we have received his report, dated 06/12/15, through the Access to Information process," the grievor admitted that he received Sgt. Dawes' report but said that it was the only document that he received. I find it difficult to believe that statement for a number of reasons. First, it was contradicted by Sgt. Cost, who had no interest whatsoever in presenting an inaccurate version. Sgt. Cost also filed into evidence the record of the access to information request file, which concurred with his testimony. Sgt. Cost stated that only one package was sent to the grievor, which contained Sgt. Dawes' report along with the other documents contained in the security file (Exhibit E-18). Considering that the grievor admitted that he received Sgt. Dawes' report through the access to information process, the only plausible conclusion is that the grievor received the complete security file and not only Sgt. Dawes' report. My conviction is reinforced by the fact that the request filed by the grievor involved numerous documents and that he was waiting for those documents to prepare his submissions to Mr. Giguère. It is unlikely that the grievor would have been satisfied with receiving only

one document. The grievor followed up on his request in May 2007, and he never notified after that follow up that he did not receive the requested material or that he received only one document. Finally, he provided his submissions in August 2007. Those points, added to the fact that the package was sent via Xpresspost™ and was not returned by Canada Post, lead me to conclude that the only plausible version is that the grievor received the package that was sent to him by Sgt. Cost and that contained most of the documents included in the security file (Exhibit E-18).

[154] Third, the evidence establishes that the grievor was not truthful on the following occasions: when he told Mr. Jay that he had been pursuing treatment since the age of 20, when he told the LPOs that he was pursuing treatment with Dr. Mulgrew and when he told Mr. Jay that no similar incident had occurred before February 8, 2006.

[155] Moreover, during his testimony, the grievor tried to minimize his false statement about receiving treatment for his condition before the February 8, 2006 incident. During cross-examination, the grievor stated that, on different occasions and in different periods of his life, he had investigated his medical condition and had consulted with different physicians and psychologists. He indicated that Dr. Yaren and Dr. Lowther explained to him that he could not characterize those consultations as treatment. Counsel for the employer then asked the grievor whether the following passage in Dr. Yaren's report was inaccurate:

Obviously it is untrue that Mr. Braun had been receiving treatment for depression for over twenty years as he had earlier claimed. Mr. Braun readily acknowledges that this was untrue but that he made these statements for the purpose of extricating himself from a difficult and embarrassing situation. . . .

[156] The grievor denied making those statements to Dr. Yaren and stated that he asked Dr. Yaren to change his report, without success. I have difficulty believing that assertion. First, Dr. Yaren had no interest in inventing the idea that the grievor admitted to falsely stating that he had been receiving treatment to extricate himself from the situation. Second, I have difficulty believing that Dr. Yaren's report would contain an inaccuracy on such an important point and that he would refuse to correct it. His report is very detailed and presents the version and statements that the grievor gave him. The accuracy of his understanding was key to his assessment because he was formulating a medical opinion based on the story that the grievor told him. Third,

the grievor's inference about his misconception of the meaning of "treatment" contradicts the answers that he provided during his security interview in 2002, in which he stated that he had never received psychiatric or psychological treatment and that he had never sought professional counselling for any personal problem (page 191 of the security file (Exhibit E-18)).

[157] During his testimony, the grievor also tried to minimize the previous incident that occurred in Calgary. When he testified about it, he stated that he did not try to leave the store with unpaid items and that he simply ran around in a frantic fashion, displacing items and ending up in the stockroom, where employees helped him calm down and later escorted him to the exit. That version contradicts the version presented in Dr. Yaren's report, in which he writes the following about the incident:

...

... On that occasion Mr. Braun reports that he, while under stress, impulsively shoplifted some food items and was apprehended by Loss Protection Officers. There was [sic] no criminal charges but Mr. Braun was banned from returning to the store. ...

...

[158] I conclude from all those discrepancies that the grievor does not hesitate to modulate his version of events to serve his interests. Therefore, I prefer Mr. Jay's versions of the February 10 and the May 1, 2006 meetings to the versions offered by the grievor.

[159] I will now discuss the specific points on which the grievor based his proposition that Mr. Jay intended to discipline him when he suspended him without pay.

[160] The grievor contended that Mr. Jay's intention transpired from his briefing note of February 20, 2006 to the Commissioner, specifically from the following passage:

These evaluations will be completed before any recommendations are made to Treasury Board in relation to the disciplinary action which will be taken. Further briefing notes will be provided.

[161] That passage cannot be isolated and it must be read in the context of the preceding paragraph, in which Mr. Jay stated the following:

The Executive level status of this manager necessitates that the matter be dealt with in a comprehensive manner. The nature of this employee's medical condition will have to be examined to determine whether it could cause the "bizarre" illegal behaviour which was observed. Its potential causal link to the story provided by Mr. Braun, that he was an undercover police officer and was suffering from work related stress, will also be examined. This information may also inform the North West Region Human Resource Officer and Force management as to their level of confidence in this employee's continued employment in his management role.

[162] Therefore, I conclude that it is not reasonable to infer from the briefing note that Mr. Jay intended to discipline the grievor.

[163] The grievor contended that the administrative guidelines on which Mr. Jay relied to suspend him without pay clearly related to the disciplinary process. While it is true that the guidelines refer to the disciplinary process, the guideline about suspension without pay refers to an interim measure to be taken when misconduct is suspected. However, it clearly indicates that the employer considers that a suspension pending investigation in that context is an administrative measure. The guideline reads as follows:

If the alleged misconduct so warrants, suspend the employee from duty immediately and obtain approval without delay. Tell the employee that he/she is suspended from duty without pay pending investigation of his/her alleged misconduct and that it will be confirmed in writing.

NOTE: A suspension without pay pending investigation is an administrative relief and is not a disciplinary action. It is to be used to protect the service, persons or property when the presence of the employee at work cannot be tolerated or could undermine or impede the investigation.

[164] I conclude that the guidelines do not indicate that Mr. Jay intended to discipline the grievor.

[165] The grievor argued that Mr. Jay clearly informed him at the May 1, 2006 meeting that he intended to terminate his employment if he did not resign. As I explained earlier, I preferred Mr. Jay's version over the one presented by the grievor. Therefore, I conclude that, during the May 1 meeting, Mr. Jay told the grievor that the situation was serious, that it raised concerns and that it warranted further investigation. I do not conclude that, at that point, Mr. Jay had formulated any opinion about discipline.

Therefore, I do not consider credible the assertion that Mr. Jay told the grievor that he would terminate his employment.

[166] During his testimony, the grievor inferred that there was a link between the decision to launch a criminal investigation and his refusal to resign at the May 1 meeting he had with Mr. Jay. First, the criminal investigation was launched on April 26, 2006, before the May 1 meeting. Second, there is no evidence to support any assertion that Mr. Jay had any saying or influence over the decision to launch a criminal investigation.

[167] The grievor also contended that the fact that Mr. Jay changed his mind about having him assessed by a Health Canada physician when he was informed that the focus would be on returning him to work reveals Mr. Jay's intention to terminate his employment. The evidence shows that Mr. Jay decided to use a forensic psychiatrist after he was informed that the Health Canada assessment would focus on the grievor's capacity to return to work because it would not answer the question of whether the grievor's medical condition had any bearing on his behaviour during the February 8, 2006 incident. I see nothing unreasonable with Mr. Jay's decision, considering that he needed that information to form an opinion about whether to move forward with discipline. The Health Canada assessment would have been useless on that regard.

[168] The grievor also contended that Mr. Jay was biased when he decided to use the services of a forensic psychiatrist who was under contract with the RCMP. There is simply no support for that assertion.

[169] The grievor further contended that Mr. Jay invited himself to the Employment Insurance Appeal Board hearing to oppose the grievor's appeal. Mr. Jay stated that he received a notice of the hearing and that he decided to attend. He attended the hearing and replied to questions he was asked about the suspension without pay. There is no evidence that supports a conclusion that Mr. Jay provided misleading information to the Board. In addition, he was within his rights, as an employer's representative, to attend the hearing. I conclude that Mr. Jay's attendance at the hearing does not reveal an intention to discipline the grievor.

[170] The grievor stated that Dr. Yaren was provided with inaccurate and prejudicial comments about him. I find it curious that Dr. Yaren did not make any reference of

that point in his report, which is otherwise very detailed. I also find it curious that the grievor did not provide any written support about the allegation that he requested Dr. Yaren to change his report. Considering my conclusion about the grievor's credibility, I do not retain that assertion.

[171] The grievor argued that, when the criminal charges were stayed and when Dr. Yaren issued his report, there were simply no reasons to maintain the suspension, yet Mr. Jay did not reinstate him. Mr. Jay explained that, despite the fact that the charges were stayed, he still had concerns. First, he realized when reading Dr. Yaren's report that the grievor had lied to him when he told him that he had been under treatment since age 20 and when he told him that it was the first time that his medical condition had manifested itself in that type of behaviour. Mr. Jay also indicated that the grievor's RRS had not been reinstated and that he was still troubled by the fact that the grievor had involved Dr. Orr. I consider that Mr. Jay's reasons for maintaining the suspension were real. They were not unreasonable, and they do not reveal an intention to discipline the grievor.

[172] I will now turn to the decision to suspend the grievor's RRS.

[173] For the following reasons, I do not consider that the decision to suspend the grievor's RRS was intended to punish or discipline him; nor is there any evidence to support a conclusion that it was made in bad faith or that there was a breach of fairness in the process that led to it.

[174] The employer was governed by the Treasury Board *Government Security Policy* and the RCMP *Policy*. Mr. Lanthier, as the OIC of departmental security, had the mandate to ensure that RCMP employees who had access to government information and assets were reliable and trustworthy. A valid RRS is a condition of employment in any capacity at the RCMP (section F.3.a. of the RCMP *Policy*), and section 10.9 of the Treasury Board *Government Security Policy* provides that departments must “[f]or cause, review, revoke, suspend or downgrade a reliability status . . .” of an employee. When Mr. Lanthier decided to suspend the grievor's RRS, he was acting within the authority vested in him.

[175] The evidence shows that his decision was motivated by real security concerns and that it was not motivated by disciplinary considerations or other ulterior motives.

[176] When Mr. Lanthier decided to suspend the grievor's RRS, his decision was motivated by the following:

- The grievor had been apprehended for shoplifting.
- The grievor was suspected of personating a police officer.
- The grievor had involved Dr. Orr, one of his subordinates.
- Criminal charges of theft under \$5000 and personating a police officer had been laid against the grievor.

[177] Mr. Lanthier agreed with Sgt. Dawes' recommendation, which was based on four security risks that he described as follows:

...

1) Mr Braun's declared psychological illness is based on his comments. Although attempts have been made to try and medically assess Mr Braun and support his comments of having a psychological illness, I have not received any documentation to date. This still needs to be clarified.

2) Mr Braun's alleged comments of being an "RCMP undercover officer" did influence the security officer in his decision to not charge Mr Braun (see statements of Troy OWENS dated 2006 Feb 13 on pages 22-24).

3) The criminal charges against Mr Braun are serious, especially in view of Mr. Braun's senior position.

4) Mr Braun was not truthful on the Security Interview Form 1020 when he answered "NO" to questions 26 and 27 in 2002 when asked: "Have you ever received psychiatric or psychological treatment?" and "Have you ever sought professional counseling for any other personal problem?" This is contrary to his 2006-05-10 statement (page 12) where he stated that he has seen several doctors since he was 23 years of age in regards to his psychological problem.

...

[178] Mr. Lanthier testified that the situation raised serious concerns about the grievor's honesty and trustworthiness and that it warranted further investigation before a final decision was made.

[179] I do not consider that the process that led to the decision was tinted by bad faith or that it was unfair. The grievor insisted on the fact that Mr. Lanthier did not meet with him before making his decision and that that constituted a breach of the duty to act fairly. While it is undisputed that Mr. Lanthier did not meet with the grievor, I do not consider that it constituted a breach of any procedural fairness. The duty to act fairly does not necessarily extend to offering the employee a hearing before the person making the decision. The duty to act fairly varies with circumstances and must, in all occasions, allow the person an opportunity to be heard. That right to be heard includes the right to be informed about the allegations against oneself, the right to have access to the all the information and material necessary for providing one's version of the events, and the right to explain, rebuke or otherwise comment on the allegations. The employee's right must also be assessed in light of the interim or permanent character of the decision.

[180] In this case, the decision to suspend the grievor's RRS was an interim decision that was made pending a further investigation and developments about the medical assessment and the criminal proceedings. The grievor had three opportunities to provide his version of the incidents as follows: when he met with Mr. Jay on February 10, 2006, when he sent his written version of the incident to Mr. Jay on February 14, 2006 and when he was interviewed by the criminal investigators on May 10, 2006.

[181] Mr. Lanthier made his decision after a thorough review of the file, which contained the statements of the grievor and the witnesses, along with all the reports and recommendations.

[182] Therefore, I conclude that the decision did not amount to disguised discipline and that the process that led to it was fair.

[183] I come to the same conclusion about the decision to revoke the grievor's RRS.

[184] The following events led to the revocation of the grievor's RRS.

[185] Sgt. Dawes, tasked with conducting the security investigation, updated his analysis in light of the stay of the criminal charges and the information contained in Dr. Yaren's report. In a memo to Mr. Lanthier on December 15, 2006, he substantiated

why he was recommending that the grievor's RRS be revoked despite the stay of procedure and Dr. Yaren's conclusions.

[186] The evidence leads me to conclude that, despite the stay of the criminal charges and the result of the medical assessment, the employer still had ongoing security concerns. Those concerns were real and substantiated and were in line with the security risk factors enunciated in the RCMP *Policy*. Nothing leads me to conclude that they were motivated by bad faith and they do not reveal an intention to discipline the grievor.

[187] Mr. Lanthier explained why he thought that the grievor's RRS should be revoked despite the stay of the criminal proceedings and Dr. Yaren's conclusions. First, he indicated that the decision that he had to make concerned security issues, not criminal responsibility. Second, he stated that it was clear to him that, on the balance of probabilities, theft had occurred and the grievor had personated a police officer to extricate himself from the situation. He was of the opinion that the grievor had not been honest, that he did not get the real story and that the grievor had changed his version of the events several times. His security concern was about honesty.

[188] Mr. Giguère made the final decision to revoke the grievor's RRS.

[189] Mr. Giguère stated that he reviewed the file before making his decision. Mr. Giguère stated that he had serious concerns about the grievor's truthfulness. He indicated that the problem did not lie with the shoplifting issue, which he believed to be a cry for help. Mr. Giguère indicated that he had issues with the following:

- Dr. Yaren stated in his report that the debt incurred by the grievor's wife was one of the elements that had prompted the incident; yet, in his submissions, the grievor stated that it was not an issue.
- Mr. Giguère found that the grievor was trying to minimize the importance of his position. However, in his view, the grievor held an important position, which involved access to protected and sensitive information. Furthermore, it did not accord with Dr. Yaren's report, which outlined that the grievor found his position stressful.

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- The grievor addressed the shoplifting issue but omitted addressing the issue of personating a police officer. However, he was of the view that the grievor had personated a police officer.
 - The grievor was not being truthful when he originally stated that no similar incidents had occurred and that he had been receiving treatment for 20 years. In fact, he waited until the third incident and until he was in a difficult situation before committing to treatment.
 - The grievor involved Dr. Orr.
 - The grievor failed to advise his superior about the incident, and when confronted by his superior, was not truthful.

[190] Mr. Giguère also explained that, when reviewing a file, he looks at the following: whether the individual has admitted or denied the damages to the organization and whether the individual did something to lessen those damages.

[191] Again, those issues constituted real security concerns. They do not reveal a concealed intent to discipline the grievor.

[192] I will now discuss the allegation about the procedural fairness, because the grievor raised it at length during the hearing. I conclude that there was no breach of procedural fairness, but had there been such a breach, the jurisprudence has established that a hearing before an adjudicator serves to cure any unfairness in the process. See *Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 (C.A.) (QL).

[193] The grievor was provided an opportunity to file written submissions before the employer made a final determination about his RRS. On January 12, 2007, Mr. Lanthier informed the grievor that a recommendation had been made to revoke his RRS, and he invited him to provide written submissions before a final decision was made. Following the receipt of Mr. Lanthier's letter, the grievor raised a disclosure issue and alleged that he was not provided with all the material necessary for him to make his submissions. Mr. Lanthier referred the grievor to the Access to Information Branch and agreed to delay his decision until the grievor received the requested material and provided his submissions. On August 7, 2007, the grievor sent his submissions, stating that he was responding to Mr. Lanthier's January 12, 2007 letter now that he had

obtained access to Sgt. Dawes' report of December 15, 2006 "... through the Access to Information process."

[194] The grievor alleged that he did not receive the material that he requested through the access to information process. As I stated earlier, there was contradictory evidence about the material that the grievor received through his access to information request. Earlier, I concluded that the only plausible version that I could consider was that the grievor received the security file and not just Sgt. Cost's report.

[195] Even had I concluded that the grievor did not receive the security file, I would still have concluded that the grievor had in his possession all the necessary material to make meaningful and thorough submissions. By his own admission, the grievor had the LPOs' statements, Dr. Yaren's report and Sgt. Dawes' report, in which he substantiated his recommendation to revoke the grievor's RRS. In fact, the grievor provided substantive submissions in which he commented and replied to each of the points raised by Sgt. Cost. Therefore, I conclude that the grievor had access to all the material that he needed to make meaningful and complete submissions before a final decision was made. I indicated earlier that I did not consider that the right to be heard always involves the right to a face-to-face discussion or to an interview with the person or body making the decision. In this case, I found that the opportunity to present written submissions allowed the grievor a real opportunity to reply to each of the employer's security concerns and that the fact that the grievor did not meet with Mr. Giguère did not constitute a breach of procedural fairness.

[196] The process that led to Mr. Giguère's decision was rigorous. Sgt. Dawes updated his report, and the file was reviewed by an analyst, Mr. Lebel, who formulated recommendations. Mr. Lebel's report was reviewed by his superior, Mr. Laurendeau, before it was handed to Mr. Giguère. Mr. Giguère was provided with the complete file and he thoroughly reviewed all the material it contained, including the grievor's statements and submissions, before making his decision.

[197] The grievor contended that Mr. Giguère's decision was based on inaccurate information and that Mr. Giguère discarded his comments and explanations. The evidence established that, although he did not retain the grievor's submissions and explanations, Mr. Giguère reviewed them before discarding them.

[198] Therefore, I conclude that no breach of procedural fairness occurred.

[199] The grievor disagreed with the decision to revoke his RRS and claimed that it was based on unreasonable considerations. I reiterate that I do not sit in appeal of the decision. My role is not to determine whether I agree or disagree with the decision, and not even whether it was reasonable, but to determine whether it was motivated by the intent to discipline the grievor.

[200] In conclusion, I consider that the decisions to suspend the grievor without pay, to suspend his RRS and to revoke his RRS were administrative in nature. I also consider that the employer acted fairly, that there was no breach of procedural fairness and that the evidence does not support an allegation that the decisions were made in bad faith. Therefore, the grievances against those three decisions do not fall within the parameters of section 209 of the *Act*.

[201] For all of the above reasons, I make the following order:

(The Order appears on the next page)

V. Order

[202] The grievances are dismissed for lack of jurisdiction.

May 14, 2010.

**Marie-Josée Bédard,
adjudicator**